(3)

IN THE COURT OF CHHATTISGARH AT BILASPUR C.G.

CRIMINAL APPEAL 293.../2002.

APPELLANT. : Arjun (Sanwate) Sanwak S/o Kamesh aged 30 years
village Kologay P.S. Milaipatti
Distt. Shrikukulam Andraparadesh.

Arrested (In Custody) Amended as per Court order Dated 24.3.03 & 25.03.03

Versus

RESPONDENT. : State of Chhattisgarh
Through P.S. Rajnandgaon.

CRIMINAL APPEAL UNDER SECTION ~~374~~ 374(2) CRIMINAL PROCEDURE CODE.

Advocate

(5)

(29)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.793/2002

Arjun Sanwak

Vs.

State of Chhattisgarh
through Police Station Rajnandgaon

ORDER

Post for 20.12.2005

Sd/-
Sunil Kumar Sinha
Judge

Zero Motion
20/12/05

(30)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.793/2002

Arjun Sanwak

Vs.

State of Chhattisgarh
through Police Station Rajnandgaon

Present:

Ku. Nirupama Vajpai, counsel for the appellant.

Shri D.K. Gwalre, Panel Lawyer, for the state.

JUDGMENT
(20.12.2005)

Sunil Kumar Sinha, J.

(1) This appeal has been directed against the impugned judgment dated 02.5.2002 passed in Special Case No.113/2001 by the Special Judge Rajnandgaon, whereby, the appellant has been convicted under section 20(b)(i) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act) and has been sentenced to undergo R.I. for 5 years and to pay a fine of Rs.5000/-. In default of payment of fine, he has been directed to undergo R.I. for one year more.

(2) The case of the prosecution is that on 24.8.2001, certain information was received by the Investigating Officer, Ajay Shankar Tripathi (P.W.6) about keeping of Ganja by the appellant. After fulfilling the formalities, he apprehended the appellant near Jaistambh, Sevtapara, Dongargaon and found that the appellant was holding a bag. After other formalities, when the bag was searched, it was found that in the said bag he was having two packets and in each packet 3 Kilograms of Ganja was kept. The seizure memo (Ex.P.12) to this effect was prepared by the investigating officer on 24.8.2001 at about 17.20 hours and the seized article was sealed at the seizure spot. The first information report was lodged vide Ex.P.15. It appears that a report about

the examination of the seized article was also received vide Ex.P.16, dated 30.8.2001 in which the seized article, sent for examination, was determined to be the Ganja by the Senior Scientific Officer and the Asst. Chemical examiner of Chemical Examination Laboratory, Raipur and thereafter the charge sheet was filed.

(3) On trial, the prosecution examined the main witness of seizure namely Rajesh Kumar (P.W.3). Rajesh Kumar stated that on the date of seizure the police informed him that one accused is having possession of Ganja and the same is to be recovered, on which he accompanied the Police Party and went to Jaistambh chowk, Sevtapara, Dongargaon where he saw the appellant holding a bag and on search being made, it was found that there were two packets of Ganja in the Bag which were seized and sealed by the Police. He signed the seizure memo. Alongwith him, one Shabbir Khan (P.W.4) was also there at the time of seizure. The learned trial Court, believing the testimony of P.W.3 Rajesh Kumar and also believing the testimony of the investigating officer Ajay Shankar Tripathi (P.W.6) arrived at a finding that the appellant was holding the possession of six kilograms of contraband, which was proved to be Ganja by the chemical examiners' report and convicted him u/s 20(b)(i) of the NDPS Act and accordingly sentenced him, as aforementioned.

(4) Relying on the decisions rendered in the matter of ***Uma -Vs- State of M.P., 2005(1) M.P.H.T. 233 and Rama Swamy -Vs- State of M.P., 2005 (1) M.P.H.T. 276***, learned counsel for the appellant argued that the appellant is an *Adivasi* and is resident of Kologay, P.S. Milaiputti, Distt. Srikakulam (A.P) and was not able to understand Hindi Language, therefore, the entire proceedings under section 50 of the N.D.P.S. Act vitiates and in fact that would amount to non-compliance of the mandatory provisions of Section 50 of the NDPS Act and the appellant should be acquitted of the charges framed against him. Alternatively, she argued that the sentence awarded to the appellant is too harsh and appropriate sentence should be imposed.

(5) I have heard learned counsel for the parties at length and have also perused the records of the court below. So far as the non-compliance of provisions of section 50 of the Act is concerned, the same would not be attracted in this case. If we go through the provisions of section 50, it would appear that it provides for conditions under which search of persons shall be conducted. Sub-section(1) of section 50 provides that when any officer duly authorized u/s 42 is about to search any person under the provisions of section 41, section 42 or section 43 he shall, if such person so requires, take such person without unnecessary delay to the nearest gazetted officer of any of the department mentioned in section 42 or to the nearest Magistrate. This clearly indicates that it only applies in case of a personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises.

(6) The Supreme Court in the matter of ***Madan Lal and another -Vs- State of H.P.(2003) 7 S.C.C. 465*** held that the language of section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles, therefore, it is clear that when a search of article like a bag was to be made, it was not necessary for the Police Officer to comply with the provisions of section 50 and in such search and seizure, the trial would not be vitiated for non-compliance of section 50 or for want of proper and effective compliance of section 50 of the NDPS Act.

(7) Learned counsel for the appellant argued that since the appellant was not knowing Hindi, therefore, there was no substantial compliance of section 50 as he could not understand as to what the investigating officer wanted to do and in this manner he was not properly apprised of his right conferred u/s 50 giving him the option to search being made in the presence of a gazetted officer of the Magistrate.

As I have already stated earlier that since it was not a case of personal search, therefore, there was no requirement of law to give a notice u/s 50 of the NDPS Act and conviction does not vitiate on account of the grounds raised vide section 50 of the NDPS Act. The next point raised by

the learned counsel for the appellant about the appellant being not acquainted with the Hindi language, the same can also not be sustained. If we examine the statement of accused recorded by the trial Court u/s 313 of Cr.P.C., it would appear that all the questions put to the appellant were put in Hindi and the appellant had not raised this ground that he may not be able to answer the questions as he does not understand Hindi. On the contrary, the appellant has given a logical reply to all the questions asked by the trial Court and looking to the records of the trial Court, it cannot be said that the appellant was not in a position to understand Hindi and in this manner, the entire proceedings including compliance of section 50 of the NDPS Act has vitiated. This argument advanced by learned counsel for the appellant cannot be sustained on the face of examination of the accused conducted in Hindi. In the facts and circumstances of this case, I do not find any infirmity in the judgment of conviction passed by the court below and the same is hereby confirmed.

(8) Now the question about sentence comes for consideration. Admittedly, the appellant was found in possession of six Kilograms of Ganja which according to notification No.S.O. 1055(E), dated 19.10.2001, Entry 55 is more than small quantity, but less than commercial quantity and the punishment prescribed under section 20(b)(ii)(B) is R.I. for a term, which may extend to 10 years and with fine which may extend to Rs.1 lakh. In the present case, the appellant is in jail since 25.8.2001 and in this manner, he has already undergone the sentence for a period of 4 years, 3 months, therefore, in the circumstance, I reduce the sentence of appellant from 5 years R.I. to the sentence already undergone and I also reduce the amount of fine from Rs.5000/- to Rs.3,000/-. If the amount of fine will not be deposited by the appellant, he shall have to undergo a further period of 2 months from today.

(9) In the result, the appeal is partly allowed to the extent indicated above.

Sd/-
Sunil Kumar Sinha
Judge